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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,518	01/26/2001	Pierre Messier	CLW 2 0142	5871

7590

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EXAMINER

CHORBAJI, MONZER R

ART UNIT

PAPER NUMBER

1744

18

DATE MAILED: 06/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/770,518

Applicant(s)

MESSIER ET AL.

Examiner

MONZER R CHORBAJI

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

This non-final rejection is in response to the RCE/Amendment received on 06/06/03

Specification

1. The amendment to the specification filed 06/06/2003 has not been entered because it does not provide page numbers for the specification to such changes.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 44 and 48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 44, lines 11-12, applicant uses the term "liquid flash-dry disinfectant composition is substantially free of a surfactant". Such a limitation cannot be found in the originally filled disclosure. The same applies to claim 48, lines 6-7.

Claim Objections

4. Claims 42-43 and 50-51 are objected to because of the following informalities:

Claim 42 refers to an aerosol apparatus. However, claim 42 depends on claim 40, which recites the limitation of an anti-microbial agent. The same applies to claims 43 and 50-51. Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 28-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smyth et al (U.S.P.N. 5,916,568) in view of Petri (EP 0 842 605 A1).

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With respect to claims 28, 32, 36, 40, 44, and 48, Smyth et al teaches an anti-microbial agent (col.3, example), which is credible to be contained in an apparatus for dispensing to be applied to a surface to be disinfected (col.3, lines 35-39). Smyth et al discloses the concentrations of the hydrogen peroxide (col.2, lines 38-39), the flash vaporization component (col.2, lines 37-38), and water (col.2, lines 59-60) in percent by weight. However, using the table provided by the applicant in the amendment dated 09/19/2002, the percent by weight values of Smyth et al were converted to percent by volume and were found to fall within the ranges disclosed in the claims for each component. For example, 35 percent by weight was converted and found to be 24 percent by volume for hydrogen peroxide, 48 percent by weight was converted and found to be 59 percent by volume for the flash vaporization component, and 17 percent by weight was converted and found to be 17 percent by volume for water. In addition, Smyth et al composition is a flash-dry disinfectant (col.1, lines 40-42) and is substantially free of a surfactant (col.3, example). However, Smyth et al fails to disclose the specific type of dispensing the composition, such as by spraying. Petri discloses a sprayer for dispensing an anti-microbial agent (page 9, lines 37-40). Thus, it would have been obvious to one having ordinary skill in the art to modify Smyth et al dispensing apparatus by including a sprayer since it is known that sprayers allow to uniformly apply to a relatively large area of a surface to be disinfected the liquid compositions (page 9, lines 40-43).

With respect to claims 29, 33, 37, 41, 45, and 49, Smyth et al discloses an alkanol as the flash vaporization component (col.3, example).

With respect to claims 30, 34, 38, 42, 46, and 50, Smyth et al discloses hydrogen peroxide as the anti-microbial agent (col.3, example).

With respect to claims 31, 35, 39, 43, 47, and 51, Smyth et al teaches that it is known to use ethanol as the flash vaporization component (col.1, lines 21-25).

Response to Arguments

9. Applicant's arguments with respect to claims 28-51 have been considered but are moot in view of the new ground(s) of rejection.

The Smyth et al reference is applied to show that the ranges for the concentration of each component of the anti-microbial agent fall within the ranges of the new claims 28, 32, 36, 40, 44, and 48 when converted from percent by weight to percent by volume.

The Petri reference is applied to show that dispensing the anti-microbial agent by a sprayer is known. Also, Petri provides the motivation for using a sprayer (page 9, lines 40-43).

Conclusion

10. The prior art made of record but not relied upon is considered pertinent to applicant's disclosure. Monticello (U.S.P.N. 5,376,387), Westfall et al (U.S.P.N. 4,716,032), and Casey et al (U.S.P.N. 4,678,658) disclose similar ranges for the concentration of each component of the anti-microbial agent.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (703) 305-3605. The examiner can normally be reached on M-F 8:30-5:00.

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12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

13. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Monzer R. Chorbaji *MR*
Patent Examiner
AU 1744
June 16, 2003

Robert J. Warden, Sr.
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